

ELECTRONICALLY FILED

PATENT APPLICATION

Docket: 17657.26a

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

| | | | |
|-----------------------|----------------------------|---|----------|
| In re application of: | |) | |
| | |) | |
| Applicant: | Chih-Wen Huang |) | |
| | |) | |
| Title: | FILE MANAGING METHOD FOR A |) | |
| | DIGITAL APPARATUS |) | |
| | |) | |
| Application No.: | 10/605,950 |) | Art Unit |
| | |) | 2166 |
| Filed: | November 9, 2003 |) | |
| | |) | |
| Customer Number | 022913 |) | |
| | |) | |
| Confirmation No.: | 2949 |) | |
| | |) | |
| Examiner: | Usmaan Saeed |) | |

APPEAL BRIEF OF APPELLANTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

On November 2, 2009, Appellant timely filed a Notice of Appeal and Pre-Appeal Request for Review from the action of the Examiner finally rejecting claims 1-2, 4-15, 17-23, 25-32, and 42-48. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on June 16, 2010 approving the appeal to proceed to the Board of Patent Appeals and Interferences. This appeal brief is being filed under the provisions of 37 C.F.R. § 41.37. The filing fee of \$540.00, as set forth in 37 C.F.R. § 41.20(b)(2) is submitted herewith. This brief is being filed on July 15, 2010 and is therefore timely under 37 C.F.R. § 41.37(a)(1).

TABLE OF CONTENTS

| | |
|---|-----------|
| APPEAL BRIEF | 1 |
| TABLE OF CONTENTS | 2 |
| REAL PARTY IN INTEREST | 3 |
| RELATED APPEALS AND INTERFERENCES | 4 |
| STATUS OF CLAIMS | 5 |
| STATUS OF AMENDMENTS | 6 |
| SUMMARY OF INVENTION..... | 7 |
| GROUND OF REJECTION TO BE REVIEWED ON APPEAL | 12 |
| ARGUMENT..... | 13 |
| CONCLUSION | 25 |
| CLAIMS APPENDIX..... | 26 |
| EVIDENCE APPENDIX..... | 32 |
| RELATED PROCEEDINGS APPENDIX | 33 |

REAL PARTY IN INTEREST

The real party in interest is Transpacific Plasma, LLC by way of assignment. The assignment from Chih-Wen Huang, who is the named inventor, conveyed the assignor's interest to Primax Electronic LTD. These assignment documents were recorded at Reel No. 014113, Frame 0825 in the United States Patent and Trademark Office on November 9, 2003. The assignment from Primax Plasma LTD, conveyed the assignor's interest to Transpacific Plasma, LLC. These assignment documents were recorded at Reel No. 0187047, Frame 0778 in the United States Patent and Trademark Office on June 26, 2006.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 3, 16, 24, and 33-41 are canceled. Claims 1-2, 4-15, 17-23, 25-32, and 42-48 are pending in this application. Claims 1-2, 4-15, 17-23, 25-32, and 42-48 were rejected in the Final Office Action mailed August 10, 2009. Claims 1-2, 4-15, 17-23, 25-32, and 42-48 are being appealed.

STATUS OF AMENDMENTS

All Amendments to the claims have been entered and no amendments have been filed after the Final Office Action from which Appellant now appeals.

SUMMARY OF INVENTION

The present invention is directed to a file managing method and apparatus for a digital apparatus. [Title].

In the way of background, “up-to-date digital cameras . . . support various operational modes, such as: still image capturing for image files (e.g. JPG, GIF, BMP etc.), motion picture capturing for motion picture files (e.g. AVI, MPG etc.), and recording for audio files (e.g. WAV, MP3 etc.). While such a device allows for flexibility in capturing different file types, often the device stores all of the files in a single folder. [Specification at [0006.] As a result, in order to access a desired file, a user has to navigate through the entire folder. [*Id.*] In order to store files in a well-classified manner, the present invention establishes folders according to different file types corresponding to different operational modes and stores files according to the file type into the different folders. [*Id.* at [0041]].

The foregoing may be implemented into an image capturing apparatus 30 as depicted in Fig. 5. [*Id.* at [0023]]. The image capturing apparatus 30 can be a digital camera or a digital camcorder. [*Id.*] The image capturing apparatus 30 includes an image capturing module 43 for receiving image signals and a recording module 45 for receiving audio signals. [*Id.* at [0024]]. The image capturing apparatus 30 further includes a control unit 46 for processing the image signals and the audio signals. [*Id.*] An operational mode button 42 switches the operational mode of the image capturing apparatus 30 between a typical picture mode, a motion picture mode, and a recording mode [*Id.* at [0029]].

A memory 48 stores image files, motion picture files, and audio files as selected by the operation mode button 42. [*Id.*] More particularly, once the operational mode button 42 has been used to select the operational mode of the image capturing apparatus 30, the controller 46

establishes a folder in the memory 48 according to the file type corresponding to the operational mode selected. [*Id.* at [0026-27].] As a result, if a typical picture mode is selected, the controller 46 establishes a folder for image files. [*Id.* at [0029]]. A folder for motion pictures or a folder for audio files is established if the motion picture mode or recording mode is selected respectively. [*Id.*] Files generated by the image capturing apparatus are then automatically classified and stored in the corresponding folders. [*Id.* at [0030]].

There are five independent claims currently pending: claims 1, 7, 25, 43, and 46. Claims 1, 7, and 43 are directed to methods for managing files while claims 35 and 46 are directed to digital apparatuses. The invention claimed by claims 1, 7, 25, 43, and 46.

Each of these claims is summarized below, with citations to corresponding portions of the specification and drawings as required by 37 C.F.R. § 41.37(c)(1)(v). These citations are provided to illustrate specific examples and embodiments of the recited claim language, and are not intended to limit the claims.

A. Claim 1

1. **(Previously Presented)** A file managing method comprising:
 - establishing a folder in a memory of a digital apparatus and responsive to a selection of an operational mode of the digital apparatus, the folder having a file type determined according to the selected operational mode;
 - capturing a file with the digital apparatus; and
 - storing the captured file in the memory of the digital apparatus according to its file type in the folder having the file type determined according to the selected operational mode.

The method of claim 1 begins with establishing a folder in a memory of a digital apparatus [Specification at [0027] and Fig. 7 at 102] which is responsive to the selection of an

operation mode of the digital apparatus [Specification at [0026]]. The folder has a file type determined according to the selected operational mode. [Specification at [0027]].

In the next steps of the method, the digital apparatus captures a file and then stores the captured file in the memory of the digital apparatus to the memory of the digital apparatus according to its file type in the folder having the file type determined according to the selected operational mode. [Specification at [0028] and Fig. 7 at 104].

B. Claim 7

7. **(Previously Presented)** A method for managing files in a digital apparatus, the method comprising:

determining an operational mode of the digital apparatus that has a plurality of operational modes, wherein the operational mode is associated with a file type;

capturing a file with the digital apparatus, wherein the file has the file type corresponding to the operational mode; and

storing the captured file in a folder in a memory of the digital apparatus, the folder corresponding to the file type of the captured file when data is captured by the digital apparatus.

The method of claim 7 begins by determining an operational mode of the digital apparatus that has a plurality of operational modes. [Fig. 7 at 100, Specification at [0026]]. The operational mode is associated with a file type. [Specification at [0029] and Fig. 8 at DC001-DC003 within box labeled “My Picture Files,” at DC004-DC005 within box labeled “My Motion Picture Files,” and at DC006-DC007 within box labeled “My Audio Files”].

In the next steps of the method, the digital apparatus captures a file and then stores the captured file in the memory of the digital apparatus to the memory of the digital apparatus corresponding to the file type of the captured file. [*Id.*].

C. Claim 25

25. **(Previously Presented)** A digital apparatus with a plurality of operational modes, the digital apparatus comprising:

- a receiving module for capturing a file;
- a control module for switching the plurality of operational modes of the digital apparatus to a particular operational mode;
- a memory having a folder, the folder corresponding to a file type associated with the particular operational mode; and
- a memory module for storing the file captured by the receiving module according to its file type to the folder in the memory having the file type.

D. Claim 43

43. **(Previously Presented)** A file managing method for managing files in a digital apparatus, the method comprising:

- providing a plurality of operational modes in the digital apparatus, each operational mode associated with a file type;
- establishing folders in a memory of the digital apparatus, wherein each folder corresponds to a particular file type; and
- providing a control module operative to store data collected in the particular operational mode in one of the folders having the particular file type that corresponds to the particular file type associated with the particular operational mode.

The method of claim 43 begins by providing a plurality of operational modes in the digital apparatus. [Fig. 7 at 100, Specification at [0026]]. The operational mode is associated with a file type. [Specification at [0029] and Fig. 8 at DC001-DC003 within box labeled “My Picture Files”; at DC004-DC005 within box labeled “My Motion Picture Files,” and at DC006-DC007 within box labeled “My Audio Files”].

In the next step of the method, a control module stores data collected in the particular operational mode in one of the folders. [*Id.*]

E. Claim 46

46. **(Previously Presented)** A digital apparatus comprising:

means for determining an operational mode of the digital apparatus, where the operational mode

means for capturing a file with an image capturing apparatus, the captured file having a file type associated with a selected operational mode of the digital apparatus; and

means for storing the captured file in a folder in a memory, wherein the folder corresponds to the file type of the capture file.

In another embodiment, a digital apparatus [Specification at [0010] and Fig. 6 at 30] includes means for determining an operational mode of the digital apparatus [Specification at [0023]-[0042]]. The digital apparatus also includes a memory having a folder corresponding to the file type associated with the particular operational mode, means for capturing a file with an imaging capturing apparatus, and means for storing the captured file in a folder in a member, wherein the folder corresponds to the file type of the capture file. [Specification at [0023]-[0042]].

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- Issue 1: Whether the Examiner erred in rejecting independent claims 1, 7, 25, 43, and 46 as obvious over *Jones* (United States Patent Publication 20020118949) in view of *Huang* (United States Patent Publication 20040098379).
- Issue 2: Whether the Examiner erred in rejecting dependent claims 2, 4-6, 8-23, 26-32, 44-45, and 47-28 as obvious over *Jones* in view of *Huang* (United States Patent Publication 20040098379).
- Issue 3: Whether the Examiner erred in rejecting dependent claims 15, 17-18, 22, and 31 as obvious over *Jones* of *Huang* in further view of *Perkes* (United States Patent Publication 20030110503).

ARGUMENT

The Examiner rejects claims 1-2, 4-14, 19-21, 23, 25-30, 32, and 42-48 under 35 U.S.C. § 103 in view of *Jones* (U.S. Publication No. 2002/0118949) and *Huang* (U.S. Publication No. 2004/0098379). The Examiner's rejection, however, is in error because the references cited, considered both alone and in combination, do not teach selection or determination of an operational mode that has a file type associated therewith.

A. Teachings of the References Cited by the Examiner

In order to understand the differences between the invention claimed in the present application and the teachings and suggestions of the cited references, it is necessary to first understand the teaching and suggestions of *Jones*, *Huang* and *Perkes*.

1. Teachings of *Jones*

The primary reference cited by the Examiner is *Jones*. *Jones* teaches that it is “desired to collect content from a number of content sources” [See *Jones* [0022]]. More specifically, *Jones* discloses a source of still images 101, a source of digital video content 105, and an audio source 109. A digital processor takes “the set of inputs created from the content sources and in an interactive session with the user/author, produces all of the translated ... data necessary for creating an output suitable for recording ... on a CD.” [*Id.* at [0024]].

Accordingly, *Jones* discloses collecting content from these sources - suggesting that these sources have existing content. In fact, the Final Office Action admits, “Jones teaching (sic) the elements of claim 1 as noted above but does not explicitly teaches (sic), ‘establishing a folder in a memory of a digital apparatus and response to the mode selection, the folder having a file type determined to the selected operational mode.’” (Final Office Action at p. 4).

2. Teachings of *Huang*

Huang teaches a “computer software system for storage, organizing, searching, and retrieval for digital media files.” [*Huang* at [0016]]. “A user beings usage of the system by *importing* files. The method of importing files is commonly known in the industry and often includes downloading files from a flash memory card from a camcorder or digital camera.” [*Id.* at [0018]]. The downloading of these files from a flash memory card suggests that the files to be stored, organized, etc. already exist on the flash memory card before manipulation by the system.

In fact, *Huang* teaches that “when the user selects folders with the “recursive” check box on, the system finds all the media files in the folders and subfolders and generates a list of file paths to copy the files to.” [*See id.* at [0026]]. Thus, *Huang* teaches a system that recursively finds all the media files in the folders and subfolders in order to import the discovered files. Fig. 5 of *Huang* shows files imported from a device into the system. The Final Office Action asserts, “figure 5 of Huang shows that the camera has a folder at H:\DCIM\100MSDCF for .JPG files and H:\MSSONY\MOML0001 for .MPG files. Therefore, the camera has different folder for different types of files.” [Final Office Action at p. 5]. However, *Huang* makes clear “the repository management unit handles where *imported files are placed* and can generate appropriate folder structure based on the attributes of the files, such as file type (audio, image, or audio) and file dates.” [*Huang* at [0025]](emphasis added). The management of imported files from a device teaches nothing as to how those files were organized or manipulated within the device.

3. Teachings of *Perke*

Perkes teaches a “system, method and computer program product for presenting media to a user in a media on demand framework.” [*Perkes*, Title]. However, the Final Office Action

provides no discussion of *Perkes* other than to discuss wireless transmissions. [See Final Office Action at p. 19].

B. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Independent Claim 1.

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Finally, MPEP 2141.III notes that:

“The key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious*. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “‘[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.” (emphasis added)

Under the guidelines in the MPEP, Examiner must establish that the references teach or suggest each and every claim element or explain “why the difference(s) between the prior art and the claimed invention would have been obvious”. The Final Office Action does neither.

Claim 1 recites “establishing a folder in a memory of a digital apparatus and responsive to a selection of an operational mode of the digital apparatus, the folder having a file type determined according to the selected operational mode.” The Final Office Action admits that *Jones* does not teach this element. (Final Office Action at p. 4).

Huang fails to remedy this deficiency. The Examiner asserts that Fig. 5 teaches this element. In the example shown in Fig. 5, the elements referenced by the Examiner are being imported from an external device into the system. Thereafter, the files are handled by the repository management system. Even if, *arguendo*, different file types are stored on different

folders on the external device (which Applicants do not admit), *Huang* is silent as to how those files were organized within the external device since the teachings of *Huang* are directed to the handling of the files *after* they are imported *from* the external device. The mere presence of folders within a file on the external device would not be instructive as to “establishing a folder in a memory of a digital apparatus and responsive to a selection of an operational mode of the digital apparatus, the folder having a file type determined according to the selected operational mode” as recited in claim 1.

Further, as introduced above, both *Jones* and *Huang* teach systems that import files from external devices and then act on those files. The handling of preexisting files that are imported into a system is not instructive as to an inferential organization of those preexisting files on the external device, much less as to the manner in which those files were organized on the external device. Accordingly, both *Jones* and *Huang* fail to teach or suggest “establishing a folder in a memory of a digital apparatus and responsive to a selection of an operational mode of the digital apparatus, the folder having a file type determined according to the selected operational mode” as recited by claim 1. The absence of this limitation alone is sufficient to require removal of the Examiner’s rejection of claim 1. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claim 1.

C. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Dependent Claims 2, 4-6.

Claims 2, 4-6 depend from claim 1. The Examiner has failed to present a *prima facie* case of obviousness with regard to claim 1, as set forth above. Because the Examiner has failed to present a *prima facie* case of obviousness with regard to claims 1, the Examiner has also failed to present a *prima facie* case of obviousness with regard to claims 2, 4-6. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claims 2, 4-6.

D. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Independent Claim 7.

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Finally, MPEP 2141.III notes that:

“The key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious*. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “‘[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.’” KSR, 550 U.S. at ___, 82 USPQ2d at 1396.” (emphasis added)

Under the guidelines in the MPEP, Examiner must establish that the references teach or suggest each and every claim element or explain “why the difference(s) between the prior art and the claimed invention would have been obvious”. The Final Office Action does neither.

Claim 7 recites “storing the captured file in a folder in a memory of the digital apparatus, the folder corresponding to the file type of the captured file when data is captured by the digital apparatus” in which “the file has the file type corresponding to the operational mode.” The Final Office Action admits that *Jones* does not teach this element. (Final Office Action at p. 8).

Huang fails to remedy this deficiency. The Examiner asserts that Fig. 5 teaches this element. In the example shown in Fig. 5, the elements referenced by the Examiner are being imported from an external device into the system. Thereafter, the files are handled by the repository management system. Even if, *arguendo*, different file types are stored on different folders on the external device (which Applicants do not admit), *Huang* is silent as to how those files were organized within the external device since the teachings of *Huang* are directed to the handling of the files *after* they are imported *from* the external device. The mere presence of

folders within a file on the external device would not be instructive as to “storing the captured file in a folder in a memory of the digital apparatus, the folder corresponding to the file type of the captured file when data is captured by the digital apparatus” in which “the file has the file type corresponding to the operational mode” as recited in claim 7.

Further, as introduced above, both *Jones* and *Huang* teach systems that import files from external devices and then act on those files. The handling of preexisting files that are imported into a system is not instructive as to an inferential organization of those preexisting files on the external device, much less as to the manner in which those files were organized on the external device. Accordingly, both *Jones* and *Huang* fail to teach or suggest “storing the captured file in a folder in a memory of the digital apparatus, the folder corresponding to the file type of the captured file when data is captured by the digital apparatus” in which “the file has the file type corresponding to the operational mode” as recited by claim 7. The absence of this limitation alone is sufficient to require removal of the Examiner’s rejection of claim 7. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claim 7.

E. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Dependent Claims 8-15, 17-23.

Claims 8-15 and 17-23 depend from claim 7. The Examiner has failed to present a *prima facie* case of obviousness with regard to claim 7, as set forth above. Because the Examiner has failed to present a *prima facie* case of obviousness with regard to claim 7, the Examiner has also failed to present a *prima facie* case of obviousness with regard to claims 8-15, 17-23. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claims 8-15, 17-23.

F. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Independent Claim 25.

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he

examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Finally, MPEP 2141.III notes that:

“The key to supporting any rejection under 35 U.S.C. 103 is the ***clear articulation of the reason(s) why the claimed invention would have been obvious.*** The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.” (emphasis added)

Under the guidelines in the MPEP, Examiner must establish that the references teach or suggest each and every claim element or explain “why the difference(s) between the prior art and the claimed invention would have been obvious”. The Final Office Action does neither.

Claim 25 recites “a memory having a folder, the folder corresponding to a file type associated with the particular operational mode.” The Final Office Action admits that *Jones* does not teach this element. (Final Office Action at p. 17). Claim 25 also recites “a memory module for storing the file captured by the receiving module according to its file type to the folder in the memory having the file type.”

Huang fails to remedy this deficiency. The Examiner asserts that Fig. 5 teaches this element. In the example shown in Fig. 5, the elements referenced by the Examiner are being imported from an external device into the system. Thereafter, the files are handled by the repository management system. Even if, *arguendo*, different file types are stored on different folders on the external device (which Applicants do not admit), *Huang* is silent as to how those files were organized within the external device since the teachings of *Huang* are directed to the handling of the files *after* they are imported *from* the external device. The mere presence of folders within a file on the external device would not be instructive as to “a memory having a folder, the folder corresponding to a file type associated with the particular operational mode; and a memory module for storing the file captured by the receiving module according to its file type to the folder in the memory having the file type” as recited in claim 25.

Further, as introduced above, both *Jones* and *Huang* teach systems that import files from external devices and then act on those files. The handling of preexisting files that are imported into a system is not instructive as to an inferential organization of those preexisting files on the external device, much less as to the manner in which those files were organized on the external device. Accordingly, both *Jones* and *Huang* fail to teach or suggest “a memory having a folder, the folder corresponding to a file type associated with the particular operational mode; and a memory module for storing the file captured by the receiving module according to its file type to the folder in the memory having the file type” as recited by claim 25. The absence of these limitations alone is sufficient to require removal of the Examiner’s rejection of claim 25. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claim 25.

G. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Dependent Claims 26-32.

Claims 26-32 depend from claim 25. The Examiner has failed to present a *prima facie* case of obviousness with regard to claim 25, as set forth above. Because the Examiner has failed to present a *prima facie* case of obviousness with regard to claim 25, the Examiner has also failed to present a *prima facie* case of obviousness with regard to claims 26-32. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claims 26-32.

H. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Independent Claim 43.

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Finally, MPEP 2141.III notes that:

“The key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious*. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396.” (emphasis added)

Under the guidelines in the MPEP, Examiner must establish that the references teach or suggest each and every claim element or explain “why the difference(s) between the prior art and the claimed invention would have been obvious”. The Final Office Action does neither.

Claim 43 recites “providing a plurality of operational modes in the digital apparatus, each operational mode associated with a file type; [and] establishing folders in a memory of the digital apparatus, wherein each folder corresponds to a particular file type.” The Final Office Action asserts that claims 42-48 are the same as claims 1-2, 4-4, 19-21, 23, 25-30 and 32. (Final Office Action at p. 18). By extension, the Office Action admits that *Jones* does not teach this element. (Final Office Action at pp. 4, 8, and 17).

Huang fails to remedy this deficiency. The Examiner asserts that Fig. 5 teaches this element. In the example shown in Fig. 5, the elements referenced by the Examiner are being imported from an external device into the system. Thereafter, the files are handled by the repository management system. Even if, *arguendo*, different file types are stored on different folders on the external device (which Applicants do not admit), *Huang* is silent as to how those files were organized within the external device since the teachings of *Huang* are directed to the handling of the files *after* they are imported *from* the external device. The mere presence of folders within a file on the external device would not be instructive as to “providing a plurality of operational modes in the digital apparatus, each operational mode associated with a file type; [and] establishing folders in a memory of the digital apparatus, wherein each folder corresponds to a particular file type” as recited in claim 43.

Further, as introduced above, both *Jones* and *Huang* teach systems that import files from external devices and then act on those files. The handling of preexisting files that are imported into a system is not instructive as to an inferential organization of those preexisting files on the external device, much less as to the manner in which those files were organized on the external

device. Accordingly, both *Jones* and *Huang* fail to teach or suggest “providing a plurality of operational modes in the digital apparatus, each operational mode associated with a file type; [and] establishing folders in a memory of the digital apparatus, wherein each folder corresponds to a particular file type” as recited by claim 43. The absence of this limitation alone is sufficient to require removal of the Examiner’s rejection of claim 43. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claim 43.

I. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Dependent Claims 44-45.

Claims 44-45 depend from claim 43. The Examiner has failed to present a *prima facie* case of obviousness with regard to claim 43, as set forth above. Because the Examiner has failed to present a *prima facie* case of obviousness with regard to claim 43, the Examiner has also failed to present a *prima facie* case of obviousness with regard to claims 44-45. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claims 44-45

J. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Independent Claim 46.

Under 35 U.S.C §103(a), “[a] patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” According to MPEP §2142, “[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” Finally, MPEP 2141.III notes that:

“The key to supporting any rejection under 35 U.S.C. 103 is the *clear articulation of the reason(s) why the claimed invention would have been obvious*. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that “‘[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead,

there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." KSR, 550 U.S. at ___, 82 USPQ2d at 1396.” (emphasis added)

Under the guidelines in the MPEP, Examiner must establish that the references teach or suggest each and every claim element or explain “why the difference(s) between the prior art and the claimed invention would have been obvious”. The Final Office Action does neither.

Claim 46 recites “means for capturing a file with an image capturing apparatus, the captured file having a file type associated with a selected operational mode of the digital apparatus; and means for storing the captured file in a folder in a memory, wherein the folder corresponds to the file type of the capture file.” The Final Office Action asserts that claims 42-48 are the same as claims 1-2, 4-4, 19-21, 23, 25-30 and 32. (Final Office Action at p. 18). By extension, the Office Action admits that *Jones* does not teach this element. (Final Office Action at pp. 4, 8, and 17).

Huang fails to remedy this deficiency. The Examiner asserts that Fig. 5 teaches this element. In the example shown in Fig. 5, the elements referenced by the Examiner are being imported from an external device into the system. Thereafter, the files are handled by the repository management system. Even if, *arguendo*, different file types are stored on different folders on the external device (which Applicants do not admit), *Huang* is silent as to how those files were organized within the external device since the teachings of *Huang* are directed to the handling of the files *after* they are imported *from* the external device. The mere presence of folders within a file on the external device would not be instructive as to “means for capturing a file with an image capturing apparatus, the captured file having a file type associated with a selected operational mode of the digital apparatus; and means for storing the captured file in a folder in a memory, wherein the folder corresponds to the file type of the capture file” as recited in claim 46.

Further, as introduced above, both *Jones* and *Huang* teach systems that import files from external devices and then act on those files. The handling of preexisting files that are imported into a system is not instructive as to an inferential organization of those preexisting files on the external device, much less as to the manner in which those files were organized on the external device. Accordingly, both *Jones* and *Huang* fail to teach or suggest “means for capturing a file with an image capturing apparatus, the captured file having a file type associated with a selected

operational mode of the digital apparatus; and means for storing the captured file in a folder in a memory, wherein the folder corresponds to the file type of the capture file” as recited by claim 46. The absence of this limitation alone is sufficient to require removal of the Examiner’s rejection of claim 46. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claim 46.

K. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Dependent Claims 47-48.

Claims 47-48 depend from claim 46. The Examiner has failed to present a *prima facie* case of obviousness with regard to claims 46 as set forth above. Because the Examiner has failed to present a *prima facie* case of obviousness with regard to claim 46 the Examiner has also failed to present a *prima facie* case of obviousness with regard to claims 47-48. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claims 47-48.

L. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Dependent Claims 15, 17-18, 22, and 31.

Claims 15, 17-18, and 22 depend from claim 7 while claim 31 depends from claim 25. The Examiner has failed to present a *prima facie* case of obviousness with regard to claims 7 and 25 as set forth above. Because the Examiner has failed to present a *prima facie* case of obviousness with regard to claims 7 and 25 the Examiner has also failed to present a *prima facie* case of obviousness with regard to claims 15, 17-18, 22, and 31. None of further applied references teach or suggest the claim elements missing from claims 7 and 25. Having failed to present a *prima facie* case of obviousness, Appellant respectfully requests the Board to remove the Examiner’s rejections and allow claims 15, 17-18, 22, and 31.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests the Board to overturn the Examiner's rejection of the appealed claims -2, 4-15, 17-23, 25-32, and 42-48 and that the claims be allowed.

CHARGE AUTHORIZATION

The Commissioner is hereby authorized to charge payment of any of the following fees that may be applicable to this communication, or credit any overpayment, to **Deposit Account No. 23-3178**: (1) any filing fees required under 37 CFR § 1.16; or (2) any patent application and reexamination processing fees under 37 CFR § 1.17.

Dated 15th day of July, 2010.

Respectfully submitted,

/Kulaniakea Fisher, Reg No. 50,987/

KULANIAKEA FISHER

Attorney for Applicant

Registration No.: 50,987

Customer No. 022913

WORKMAN NYDEGGER

1000 Eagle Gate Tower

60 East South Temple

Salt Lake City, UT 84111

Phone: 801-533-9800

Fax: 801-328-1707

KF:vlr
2946141_1.DOC

CLAIMS APPENDIX

1. **(Previously Presented)** A file managing method comprising:
 establishing a folder in a memory of a digital apparatus and responsive to a selection of an operational mode of the digital apparatus, the folder having a file type determined according to the selected operational mode;
 capturing a file with the digital apparatus; and
 storing the captured file in the memory of the digital apparatus according to its file type in the folder having the file type determined according to the selected operational mode.
2. **(Previously Presented)** The method of claim 1, further comprising utilizing corresponding applications to open the captured file according to a name of the established folder.
3. **(Cancelled)**
4. **(Previously Presented)** The method of claim 1, wherein the operational mode comprises a picture mode.
5. **(Original)** The method of claim 1, wherein the operational mode comprises a motion picture mode.
6. **(Original)** The method of claim 1, wherein the operational mode comprises a recording mode.

7. **(Previously Presented)** A method for managing files in a digital apparatus, the method comprising:

determining an operational mode of the digital apparatus that has a plurality of operational modes, wherein the operational mode is associated with a file type;

capturing a file with the digital apparatus, wherein the file has the file type corresponding to the operational mode; and

storing the captured file in a folder in a memory of the digital apparatus, the folder corresponding to the file type of the captured file when data is captured by the digital apparatus.

8. **(Previously Presented)** The method of claim 7, further comprising:

utilizing an image capturing module to capture image data; and

automatically establishing the folder corresponding to the file type of the image data.

9. **(Previously Presented)** The method of claim 7, further comprising:

utilizing a recording module to capture sound data; and

automatically establishing the folder corresponding to the file type of the sound data.

10. **(Previously Presented)** The method of claim 1, wherein storing the captured file according to its file type comprises comparing the name of the folder established responsive to selecting the operational mode with a file name extension of the captured file.

11. **(Previously Presented)** The method of claim 1, further comprising setting up a shortcut to transmit the captured file in the established folder to a corresponding folder having the same file type as the established folder in another digital apparatus when the shortcut is executed.

12. **(Previously Presented)** The method of claim 11, wherein when the shortcut is executed, all files of the same file type stored in the established folder are transmitted to the corresponding folder in the other digital apparatus.

13. **(Original)** The method of claim 11, wherein the shortcut is executed by a hot key.

14. **(Previously Presented)** The method of claim 11, wherein the other digital apparatus comprises a computer.

15. **(Previously Presented)** The method of claim 11, wherein the files stored in the established folder are transmitted to the corresponding folder of the other digital apparatus using wireless network transmission.

16. **(Cancelled)**

17. **(Previously Presented)** The method of claim 15, wherein the wireless network transmission comprises infrared transmission.

18. **(Previously Presented)** The method of claim 11, wherein the files stored in the established folder are transmitted to the corresponding folder of the other digital apparatus using a cable.

19. **(Previously Presented)** The method of claim 11, further comprising automatically establishing a corresponding folder in the other digital apparatus having the same file type as the established folder when transmitting the files stored in the established folder to the other digital apparatus.

20. **(Previously Presented)** The method of claim 19, wherein the other digital apparatus comprises a computer.

21. **(Previously Presented)** The method of claim 1, wherein the digital apparatus comprises a digital camera.

22. **(Previously Presented)** The method of claim 1, wherein the digital apparatus comprises a mobile phone.

23. **(Previously Presented)** The method of claim 19, wherein the digital apparatus comprises a digital camcorder.

24. **(Cancelled)**

25. **(Previously Presented)** A digital apparatus with a plurality of operational modes, the digital apparatus comprising:

a receiving module for capturing a file;

a control module for switching the plurality of operational modes of the digital apparatus to a particular operational mode;

a memory having a folder, the folder corresponding to a file type associated with the particular operational mode; and

a memory module for storing the file captured by the receiving module according to its file type to the folder in the memory having the file type.

26. **(Previously Presented)** The digital apparatus of claim 25, wherein the operational mode comprises a picture mode.

27. **(Original)** The digital apparatus of claim 25, wherein the operational mode comprises a motion picture mode.

28. **(Original)** The digital apparatus of claim 25, wherein the operational mode comprises a recording mode.

29. **(Previously Presented)** The digital apparatus of claim 25, further comprising a hot key capable of transmitting the file in the corresponding folder to another digital apparatus when pressed.

30. **(Previously Presented)** The digital apparatus of claim 25, wherein the digital apparatus comprises a digital camera.

31. **(Previously Presented)** The digital apparatus of claim 25, wherein the digital apparatus comprises a mobile phone.

32. **(Previously Presented)** The digital apparatus of claim 25, wherein the digital apparatus comprises a digital camcorder.

33-41. **(Cancelled)**

42. **(Previously Presented)** The digital apparatus of claim 25, further comprising a folder establishing module for automatically establishing the folder in the memory, the folder established in response to a selection of the particular operational mode, the folder having the file type corresponding to the particular operational mode of the digital apparatus.

43. **(Previously Presented)** A file managing method for managing files in a digital apparatus, the method comprising:

providing a plurality of operational modes in the digital apparatus, each operational mode associated with a file type;

establishing folders in a memory of the digital apparatus, wherein each folder corresponds to a particular file type; and

providing a control module operative to store data collected in the particular operational mode in one of the folders having the particular file type that corresponds to the particular file type associated with the particular operational mode.

44. **(Previously Presented)** The method of claim 43, wherein the particular operational mode comprises one of a picture mode, a motion picture mode, or a recording model.

45. **(Previously Presented)** The method of claim 43, further comprising automatically establishing the folders in response to the selection of the plurality of operational modes.

46. **(Previously Presented)** A digital apparatus comprising:
means for determining an operational mode of the digital apparatus, where the operational mode
means for capturing a file with an image capturing apparatus, the captured file having a file type associated with a selected operational mode of the digital apparatus;
and
means for storing the captured file in a folder in a memory, wherein the folder corresponds to the file type of the capture file.

47. **(Previously Presented)** The digital apparatus of claim 46, further comprising means for establishing the folder in the memory of the device, the means for establishing the folder responsive to the means for determining an operational mode.

48. **(Previously Presented)** The digital apparatus of claim 46, further comprising means for transmitting the captured file to a corresponding folder of another digital apparatus.

EVIDENCE APPENDIX

Not applicable.

RELATED PROCEEDINGS APPENDIX

Not applicable.